

REMARKS

Rejection of Claims 1, 3-5, 8-9, 12, 20-26, 29-30, 43-44 and 46 Under 35 U.S.C. § 102(e):

The Examiner has rejected Claims 1, 3-5, 8-9, 12, 20-26, 29-30, 43-44 and 46 under 35 U.S.C. § 102(e), contending that these claims are anticipated by U.S. Patent No. 6,743,429[sic] as evidenced by Beaupre et al. Specifically, the Examiner asserts that reference teaches a method to inhibit allergen-induced airway hyperresponsiveness in guinea pigs by administering CGRP. Beaupre et al. is cited for allegedly teaching that PC₂₀FEV1 is the concentration of provoking agent that causes a 20% fall in FEV1 to characterize the clinical state of an asthmatic.

Applicants traverse the rejection of Claims 1, 3-5, 8-9, 12, 20-26, 29-30, 43-44 and 46 under 35 U.S.C. § 102(e). Applicants submit that U.S. Patent No. 6,743,429 is not effective prior art against the claimed invention because the claimed subject matter was invented by the present inventors prior to the effective date of U.S. Patent No. 6,743,429 (December 30, 1999) and prior to the earliest priority date of U.S. Patent No. 6,743,429 (December 24, 1999). Enclosed herewith is a Declaration under 37 CFR § 1.131 executed by both of the present inventors. This Declaration provides evidence of actual reduction to practice of the claimed invention at a date prior to the earliest priority filing date of U.S. Patent No. 6,743,429 (i.e., December 24, 1999). As required by 37 CFR § 1.131, the Declaration affirms that the acts relied upon to establish actual reduction to practice were carried out in the United States. Therefore, Applicants submit that U.S. Patent No. 6,743,429 is not an effective reference against the present claims.

In view of the foregoing remarks, Applicants respectfully request that the Examiner withdraw the rejection of Claims 1, 3-5, 8-9, 12, 20-26, 29-30, 43-44 and 46 under 35 U.S.C. § 102(e).

Rejection of Claims 1, 6-7, 10 and 13-14 Under 35 U.S.C. § 103:

The Examiner has rejected Claims 1, 6-7, 10 and 13-14 under 35 U.S.C. § 103, contending that these claims are unpatentable over U.S. Patent No. 6,743,429[sic] as evidenced by Beaupre et al. The Examiner contends that various embodiments in Claims 6-7, 10 and 13-14 were not taught by U.S. Patent No. 6,743,429, but submits that it is well within the purview of one of ordinary skill in the art to optimize dosing schedules for a particular regimen as taught by U.S. Patent No. 6,743,429.

Application No. 09/809,753

Applicants traverse the rejection of Claims 1, 6-7, 10 and 13-14 under 35 U.S.C. § 103. Applicants refer to the discussion under the § 102(e) rejection above and the Declaration under 27 CFR § 1.131, and again submit that for these same reasons, U.S. Patent No. 6,743,429 is not an effective reference against the present claims. Any teachings in Beaupre et al. do not teach or suggest the presently claimed invention.

In view of the foregoing remarks, Applicants respectfully request that the Examiner withdraw the rejection of Claims 1, 6-7, 10 and 13-14 under 35 U.S.C. § 103.

Applicants have responded to all of the Examiner's issues as set forth in the August 10 Office Action and it is submitted that the claims are now in a condition for allowance. The Examiner's acknowledgment of the same is respectfully requested.

Respectfully submitted,

SHERIDAN ROSS P.C.

By: Angela Dallas Sebor

Angela Dallas Sebor
Registration No. 42,460
1560 Broadway, Suite 1200
Denver, CO 80202-5141
(303) 863-9700

Date: 9 February 2006